

JA



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,716	01/22/2004	Keith Corbalis	KCORB.001A	5202

20995 7590 03/23/2005

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

NGUYEN, KIEN T

ART UNIT PAPER NUMBER

3714

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

7P

Office Action Summary

Application No.

10/762,716

Applicant(s)

CORBALIS, KEITH

Examiner

Kien T. Nguyen

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8 is/are allowed.
- 6) ☒ Claim(s) 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Cannavino U.S. Patent 6,264,569.

Cannavino disclosed a training device comprising a frame (12, 13, 14, 15), at least three resilient cables (34-37) being secured to the frame, a spring board deck (33) being secured to the cables, and a foot deck (27) rotatably attached to the spring board deck (33) via member (30) (applicant's claim 9). The frame (12-15) removably connected to the cable by members (39, 40) in which the cables could be removed from the frame and the frame could be collapsible for storage (applicant's claim 10, 11). Member (16) could be considered a handlebar attached to the frame (applicant's claim 12); the cables are secured to the frame by cable anchors (hooks) (see Fig. 5) (applicant's claim 13)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3714

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cannavino in view of Heubl U.S. Patent 5,499,949.

It is noted that Cannavino failed to teach the relative elevation between a surface supporting the frame and the spring board deck is adjustable as set forth in these claims. However, Heubl teaches a rocking device a board above ground surface supporting a frame (5, 6); at least three resilient cables supporting a spring board deck (2) and the relative elevation between ground surface and the deck is adjustable by adjusting the length of at least one of the cable (see column 4, lines 54-61). Accordingly, it would have been obvious to one of ordinary skill in the art to modify the structure of Cannavino with the teaching as stated by Heubl for the purpose of allowing height adjustment for different types of users.

Response to Arguments

In response to applicant's argument that Cannavino does not disclose that one would ever put a foot on the "seat support" or foot deck, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). In this case, the seat supports (27, 28) have a substantially flat surface that is more than capable of being stood upon. Whether it is desirable to do so

Art Unit: 3714

is not a test in the broadest reasonable interpretation during examination. There is no particular structural language in claim 9 that clearly distinguish the foot deck from the members (27, 28) of Cannavino.

In response to applicant's argument regarding the frame of Cannavino as being collapsible. Claim 10 does not require any particular manner that the frame could be collapsed. The spring board deck (33) of Cannavino is secured to the frame (12, 13, 14, 15) via resilient members (34, 35, 36, 37) respectively. The resilient members are open-ended coiled springs (see column 6, line 55) and clearly removably coupled to the frame the hook screws (38, 39, 40, 41) of the frame as shown in Fig. 1. Accordingly, the spring board deck (33) could inherently be removed from the frame for storage.

In response to applicant's argument concerning the handle bar in claim 13, see the above explanation for claim 9.

In response to applicant's argument that the combination of Cannavino and Heubl could not have taught or suggested every limitations of claims 14 and 15, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, the teaching of adjustable support member of a rocking device to accommodate users with different sizes would have suggested to those of ordinary skill in the art.

Art Unit: 3714

In response to applicant's argument that Cannavino and Heubl are nonanalogous art as stated on page 6 of the amendment, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both devices of Cannavino and Heubl are directed to rocking devices that supported by resilient members. It is submitted that both Cannavino and Heubl are in the field of applicant's endeavor.

Allowable Subject Matter

Claims 1-8 are allowed.

Conclusion

~~THIS ACTION IS MADE FINAL.~~ Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

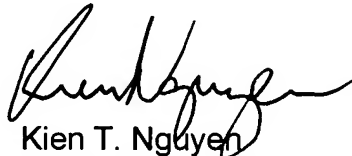
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3714

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kien T. Nguyen whose telephone number is (571) 272-4428. The examiner can normally be reached on 7:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kien T. Nguyen
Primary Examiner
Art Unit 3714

Ktn